

Rodney L. Umberger, WSBA No. 24948
Eddy M. Silverman, WSBA No. 53494
WILLIAMS, KASTNER & GIBBS PLLC
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Attorneys for Walmart Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

BRIGITTE WOODBURY,

NO.

Plaintiff.

(OKANOGAN COUNTY
SUPERIOR COURT CAUSE NO.
21-2-00160-24)

WALMART INC.

NOTICE OF REMOVAL BY DEFENDANT WALMART INC.

TO: CLERK OF THE COURT;

AND TO: PLAINTIFF BRIGITTE WOODBURY;

AND TO: PLAINTIFF'S COUNSEL OF RECORD.

I. RELIEF REQUESTED

Defendant WALMART INC. (“Walmart”) seeks to remove the above-captioned case from Okanogan County Superior Court in Washington State to the United States District Court for the Eastern District of Washington at Spokane under 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATEMENT OF FACTS

1. Underlying Incident

Plaintiff Brigitte Woodbury (“Plaintiff”) alleges that she was injured when

she tripped over a cart while shopping at a Walmart store in Omak, Washington on February 4, 2021. *See* Declaration of Eddy Silverman, attached hereto as **Exhibit A**; *see also* Complaint, attached hereto as **Exhibit B**.

2. Relevant Procedural Facts

Plaintiff filed a Complaint in the Superior Court of Washington for Okanogan County on June 23, 2021. *See Ex. B.* There are no specific allegations pertaining to damages in the Complaint (no amounts claimed). *See id.*

On August 13, 2021, Walmart served Plaintiff with Defendant Walmart Inc.’s First Interrogatories and Requests for Production to Plaintiff—to which Plaintiff responded on September 28, 2021. *See* attached hereto as **Exhibit C**. Walmart, in its Interrogatory No. 28 to Plaintiff, asked: “Please set forth separately the amounts of (a) any special damages and (b) general damages you are seeking in this suit.” *Id.* In response to Interrogatory No. 28, Plaintiff stated that she “anticipate[s] asking a jury to award [her] \$500,000.00 in general damages.” *Id.*

III. STATEMENT OF THE ISSUE

Whether this case may be properly removed to federal court where there is total diversity between the parties and the amount in controversy is in excess of \$75,000 exclusive of interest and costs according to Plaintiff's response to Walmart's Interrogatory No. 28.

IV. EVIDENCE RELIED UPON

This motion is based upon the records and pleadings on file with the Court, as well as the Declaration of Eddy Silverman, Esq., attached hereto as Exhibit A.

NOTICE OF REMOVAL BY DEFENDANT WALMART INC. - 2

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V. ARGUMENT

A. This Case Is Removable Under 28 U.S.C. § 1332, Through Which This Court Has Original Jurisdiction Over The Lawsuit Filed by Plaintiff In Okanogan County Superior Court

The district courts shall have original jurisdiction of all civil actions (1) where the parties in the case are diverse as defined by 28 U.S.C. § 1332(a)(1)-(4); (2) where the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs; and (3) where removal is timely. The amount in controversy can either be evident “on the face” of the Complaint or ascertained via some later pleading(s) or “other paper” in the record of the state court proceeding. See 28 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689 (2005).

When and how removability is “ascertainable” matters with respect to whether removal is timely under 28 U.S.C. § 1446. There are, generally speaking, two viable “removal periods.” *See Harris*, 425 F.3d at 694. [1] A defendant has 30 days to remove a case if the removability of the case is evident on the face of the complaint; or [2] a defendant has 30 days beyond some later period from which it first becomes ascertainable that the case is removable. *See id.* (“[T]he first thirty-day requirement [to remove] is triggered by defendant’s receipt of an ‘initial pleading’ that reveals a basis for removal. If no ground for removal is evident in that pleading, the case is ‘not removable’ at that stage. In such case, the notice of removal may be filed within thirty days after the defendant receives [‘other paper’] from which it can be ascertained...that removal is proper.”) (citations omitted).

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NOTICE OF REMOVAL BY DEFENDANT WALMART INC. - 3

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1 In this case, (1) diversity between the parties is evident on the face of the
 2 Complaint; (2) the fact that the amount in controversy exceeds the sum or value
 3 of \$75,000 exclusive of interest and costs was not evident on the face of the
 4 Complaint, but is now evident from Plaintiff's response to Walmart's
 5 Interrogatory No. 28 ("interrogatory response"); and (3) insofar as Walmart is
 6 filing this Notice of Removal within 30 days of service of receiving the
 7 aforementioned interrogatory response, Walmart's Notice is timely and this case
 8 may be properly removed under 28 U.S.C. §§ 1446(b) and 1332.

9 1. There Is Diversity Between The Parties

10 Per the Complaint, Plaintiff resides in Okanogan County, Washington. *See*
 11 Ex. B. at ¶ 2.1. Thus, Plaintiff is a "citizen of" Washington state. Walmart is (a)
 12 incorporated in Delaware and (b) its principal place of business is in Arkansas.
 13 Thus, Walmart is "a citizen of" either Delaware or Arkansas, but not Washington
 14 State. Accord 28 U.S.C. § 1332(c)(1). Based on the foregoing, there is diversity
 15 between these parties as described in 28 U.S.C. § 1332(a)(1).

16 2. The Amount In Controversy Exceeds The Sum Or Value Of \$75,000

17 Per Plaintiff's response to Walmart's Interrogatory No. 28, the amount in
 18 controversy in this matter is in excess of \$500,000. *See* Ex. C.

19 3. Walmart's Notice Of Removal Is Timely

20 In this matter, the case stated by the initial pleading was not removable (no
 21 specific amounts claimed in Complaint); however, Plaintiff's answer to
 22 Walmart's Interrogatory No. 28 constitutes "other paper" within the meaning of
 23 28 U.S.C. § 1446 from which it could first be ascertained that this case is
 24 removable. As this Notice is being filed within 30 days of receipt of that
 25 response/"other paper," this Notice is timely.

1 B. Walmart's Notice Of Removal Complies With All Applicable Federal
 2 Procedural Rules Attendant To Removal

3 1. Both The Federal And State Courts Are On Proper Notice Of This
 4 Removal Action

5 This Notice is properly filed in the United States District Court for the
 6 Eastern District of Washington because this Court embraces Okanogan County,
 7 the county in which the state court action is now pending. See 28 U.S.C. §§
 8 128(b) and 1441(a).

9 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice
 10 with the Clerk of the Okanogan County Superior Court and is also serving a copy
 11 of this Notice on Plaintiff's counsel of record in the state court action.

12 2. All State Court Records And Proceedings Have Been Provided With
 13 This Removal Petition

14 Walmart has filed and/or otherwise provided true and complete copies of
 15 all records and proceedings filed in the state court proceeding being removed by
 16 virtue of this petition. These documents/exhibits constitute and contain the
 17 entirety of the records and proceedings filed in Okanogan County Superior Court
 18 as of the date of filing this Notice. True and complete copies of all pleadings,
 19 records, and documents filed in the state court action are attached hereto as

20 **Exhibit D.**

21 VI. CONCLUSION

22 Walmart hereby removes this case from the Okanogan County Superior
 23 Court to the United States District Court for the Eastern District of Washington at
 24 Spokane pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. By removing, Walmart

1 does not waive any defenses, including but not limited to lack of personal
2 jurisdiction, insufficiency of process, or insufficiency of service of process.

3 DATED this 27th day of October, 2021.

4
5 WILLIAMS, KASTNER & GIBBS
6 PLLC
7

8 /s/Rodney L. Umberger
9 Rodney L. Umberger, WSBA # 24948
10

11 /s/Edward M. Silverman
12 Edward M. Silverman, WSBA # 53494
13

14 Two Union Square
15 601 Union Street, Suite 4100
16 Seattle, WA 98101-2380
17 Phone: 206.628.6600
18 Fax: 206.628.6611
19 Email: rumberger@williamskastner.com
20 esilverman@williamskastner.com
21
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23 ***Counsel for Defendant Walmart Inc.***
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NOTICE OF REMOVAL BY DEFENDANT WALMART INC. - 6

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

EMERALD LAW GROUP, PLLC

ECF

Jonathan Nolley, WSBA #35850

12055 15th Avenue NE

Seattle, WA 98125

Seattle, WA 98123
Tel: 206 826 5160

Email: jonathan@emeraldlawgroup.com

VALOR LAW GROUP PS

Alex Thomason, WSBA 35975

110 W Lakeshore Dr.

116 W Lakeshore Dr

Pateros, WA 98846
Tel: (509) 689-3471

Email: alex@valorlawgroup.com

Email: alex@valorlawgroup.com

Counsel for Plaintiff

Signed at Seattle, Washington this 27th day of October, 2021.

WILLIAMS, KASTNER & GIBBS PLLC

/s/Gayle Nelligan

Gayle Neligan, Legal Assistant

NOTICE OF REMOVAL BY DEFENDANT WALMART INC. - 7

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EXHIBIT A

Rodney L. Umberger, WSBA No. 24948
Eddy M. Silverman, WSBA No. 53494
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Email: esilverman@williamskastner.com
Attorneys for Walmart Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

BRIGITTE WOODBURY,
Plaintiff,
v.
WALMART INC.,
Defendant.

NO.
(OKANOGAN COUNTY
SUPERIOR COURT CAUSE NO.
21-2-00160-24)

DECLARATION OF EDDY
SILVERMAN, ESQ., IN SUPPORT
OF WALMART INC.'S NOTICE OF
REMOVAL

I, Eddy Silverman, Esq., hereby declare and say:

1. That I am an attorney of the law firm of WILLIAMS, KASTNER & GIBBS PLLC, and I am licensed to practice law in this Court.

2. I am over the age of eighteen and a U.S. citizen. I have personal knowledge of the facts referred to in this Declaration and could competently testify to these facts if called upon to do so in a court of law.

DECLARATION OF EDDY SILVERMAN, ESQ., IN SUPPORT OF
WALMART INC.'S NOTICE OF REMOVAL - 1

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Seattle, Washington 98101-2380
(206) 628-6600

3. Along with Rodney L. Umberger, I represent WALMART INC. (“Walmart”) in the above captioned lawsuit, and I am making this Declaration in support of Walmart’s Notice of Removal to this Court.

4. This Declaration is identifiable as **Exhibit A** to Walmart's Notice of Removal.

5. Attached hereto as **Exhibit B** is a true and complete copy of the operative Complaint filed in state court in this matter.

6. Attached hereto as **Exhibit C** is a true and complete copy of an excerpt from Plaintiff's Response to Walmart Inc.'s First Set of Interrogatories And Requests for Production.

7. Attached hereto as **Exhibit D**, are true and complete copies of all additional records and proceedings filed in the underlying action.

I declare under penalty of perjury under the laws of the United States and
of the State of Washington that the foregoing is true and correct.

DATED this 27th day of October, 2021.

WILLIAMS, KASTNER & GIBBS
PLLC

By s/Eddy Silverman
Eddy Silverman, WSBA No. 53494

DECLARATION OF EDDY SILVERMAN, ESQ., IN SUPPORT OF
WALMART INC.'S NOTICE OF REMOVAL - 2

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EXHIBIT B

FILED

2021 JUN 23 PM 1:05

CHARLEEN GROOMES
OKANOGAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

BRIGITTE WOODBURY, an individual,

Plaintiff,

v.

WALMART, INC.

Defendant.

NO.
21-2 0016024

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Brigitte Woodbury, by and through her attorneys Jonathan Nolley of the Emerald Law Group and Alex Thomason of Valor Law Group, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1.1 The above-entitled court has jurisdiction over the subject matter of this lawsuit.

1.2 The above-entitled court is the proper venue for this action because the incidents described herein and the negligent and tortious acts alleged herein occurred in Omak, Okanogan, Washington.

II. PARTIES

2.1 At all times material hereto, Plaintiff Brigitte Woodbury ("Plaintiff") is and was an individual residing in Okanogan County, Washington.

COMPLAINT FOR DAMAGES- 1

COPY

EMERALD LAW GROUP
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Seattle, Washington 98125
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F: 206.922.5598

1 2.2 At all times relevant hereto, Defendant Walmart, Inc ("Walmart") is and was a
2 corporation doing business in Okanogan County, Washington.

3 **III. CLAIMS AGAINST DEFENDANT**

4 3.1 Defendant is the owner of a local Walmart store located at 902 Engh Road, Omak,
5 Washington.

6 3.2 On or about February 4, 2021, Plaintiff went shopping at Defendant's store.

7 3.3 When Plaintiff was in the electronics department of the store, an employee of
8 Defendant, also in the electronics department, was pushing a flat "platform-style truck" cart ("the
9 cart") that was low to the ground.

10 3.4 This same employee pushed the cart and left it directly behind where Plaintiff was
11 standing with her back turned to the cart.

12 3.5 Neither the employee nor any other employee of Defendant took any steps to warn
13 Plaintiff of the cart that was directly behind her.

14 3.6 As Plaintiff turned to leave, she tripped over the cart and suffered injuries.

15 3.7 At all times relevant hereto, Plaintiff was a business invitee at Defendant's store.

16 3.8 Defendant owed Plaintiff a duty to maintain a safe premises and to take measures to
17 prevent Plaintiff from encountering any hazards or provide adequate warning to allow Plaintiff to
18 avoid such hazards.

19 3.9 It was foreseeable that Plaintiff would trip and fall over the low-profile cart that was
20 left behind her.

21 3.10 Defendant breached its duties when its employee left the cart directly behind
22 Plaintiff and in a place where Plaintiff could not see the cart prior to turning and tripping over the
23 low platform of the cart.

24 27 COMPLAINT FOR DAMAGES- 2
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2 3.11 As a direct and proximate result of Defendant's acts and/or omissions described
3 herein, Plaintiff suffered damages.

6

IV. DAMAGES

2

6 Plaintiff was injured, suffered and continue to suffer from, without limitation, severe personal
7 injuries, physical disability and pain, pain and suffering, future pain and suffering, emotional
8 trauma, medical expenses, loss of enjoyment of life, lost income and earnings, and other
9 economic and non-economic damages to be proven at trial.
10

12

V. LIMITED PHYSICIAN/PATIENT WAIVER

12

13 RCW 5.60.060, and as limited by Plaintiff's Constitutional rights of privacy, contractual rights of
14 privacy, and as circumscribed by the ethical and legal obligations of treating physicians and
15 attorneys for the defendants not to engage in *ex parte* contact.

44

WHEREFORE, Plaintiff pray for relief as follows:

19

19 be determined at trial;

20

2. For Plaintiff's costs and disbursements herein;

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3. For an award of Plaintiff's attorney's fees;

25

4. For an award of pre-judgment interest at the statutory rate on items of special damages including, without limitation, expenses of medical care and treatment and property damage; and

23

4. For an award of pre-judgment interest at the statutory rate on items of special expenses including, without limitation, expenses of medical care and treatment and property damage; and

3

5. For such other and further relief as the court may deem just and equitable.

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COMPLAINT FOR DAMAGES- 3

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2 DATED this 16 day of June, 2021.
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EMERALD LAW GROUP, PLLC

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6 Jonathan Nolley, WSBA No. 35850
7 Attorneys for Plaintiff
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VALOR LAW GROUP PS.

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Alex Thomason, WSBA No. 35975
Attorneys for Plaintiff

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COMPLAINT FOR DAMAGES- 4
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EXHIBIT C

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7 SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

8 BRIGITTE WOODBURY,

NO. 21-2-00160-24

9 Plaintiff,

10 v.

11 WALMART INC,

DEFENDANT WALMART INC.’S FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO PLAINTIFF AND
ANSWERS THERETO

12 Defendant.

13
14 TO: Brigitte, Plaintiff;

15 AND TO: Jonathan Nolley/Emerald Law Group, PLLC and Alex Thomason/Valor Law
Group, PS, Counsel for Plaintiff.

16 In accordance with CR 33 and CR 34, please answer the following Interrogatories and
17 Requests for Production fully and separately, under oath, within thirty (30) days of the date of
18 service.

19 In accordance with CR 26(b)(4), Defendant WALMART INC. (“Walmart”) will object
20 at trial to the use of or reference to any testimony by any expert witness whose identity,
21 opinions and summary of the grounds for each opinion are not provided or disclosed in
22 response to these interrogatories and requests for production.

23 If you claim any privilege with respect to any information called for by an interrogatory
24 or request for production or any part thereof, identify the type of privilege which is claimed,
25

DEFENDANT WALMART INC.’S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND
ANSWERS THERETO- 1

Emerald Law Group PLLC
12055 15th Avenue NE
Seattle, Washington 98125
(206) 826-5160

1 impossible to sleep at night. Because I was on blood thinners, I suffered severe bruising
2 resulting from the fall that was very painful. Though I have improved with surgery and
3 physical therapy, I continue to have pain with certain movements and am fearful of re-tearing
4 the shoulder again, something that continues to limit my daily activities.
5
6

7 **INTERROGATORY NO. 27:** Please IDENTIFY any liens, including amount(s),
8 against any settlement in this LAWSUIT.

9 **ANSWER:**

10 Medicare has a lien but the amount is not yet known.
11

12 **INTERROGATORY NO. 28:** Please set forth separately the amounts of (a) any
13 special damages and (b) general damages you are seeking in this suit.

14 **Note: Referring to medical records and/or stating that damages will “be determined by a**
15 **trier of fact,” or some variation of that contention, is not responsive. This question seeks**
16 **to know both the economic and non-economic (“pain-and-suffering”) damages you are**

17 **seeking in this lawsuit.**

18 **ANSWER:**

19 I have not obtained all the medical billing records to calculate my total medical bills from the
20 date of the incident through my last physical therapy visit earlier this month. This answer will
21 be supplemented.
22

23 To the extent it is necessary to reduce my general damages to a specific amount, I anticipate
24 asking a jury to award me \$500,000.00 in general damages.
25

DEFENDANT WALMART INC.’S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND
ANSWERS THERETO- 13

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Seattle, Washington 98125
(206) 826-5160

VERIFICATION

The undersigned declares under penalty of perjury under the laws of the State of Washington that she is the Plaintiff in the above-entitled action, that she has read the foregoing responses to Defendant Walmart Inc.'s First Interrogatories and Requests for Production to Plaintiff, knows the contents thereof, and believes the same to be true.

DATED this 28 day of September, 2021, in Winthrop, Washington.

— DocuSigned by:

Bray with W. S. DeLong

E3231C268BAC4A5...
Brigitte Woodbury, Plaintiff

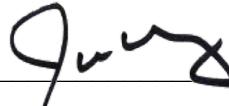
DEFENDANT WALMART INC.'S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND
ANSWERS THERETO- 20

Emerald Law Group PLLC
12055 15th Avenue NE
Seattle, Washington 98125
(206) 826-5160

1 **ATTORNEY'S CR 26 CERTIFICATION**

2 The undersigned attorney certifies pursuant to Civil Rule 26(g) that he or she has read
3 each response and objection to these discovery requests, and that to the best of his or her
4 knowledge, information, and belief formed after a reasonable inquiry, each is (1) consistent
5 with the Civil Rules and warranted by existing law or a good faith argument for the extension,
6 modification, or reversal of existing law; (2) not interposed for any improper purpose, such as
7 to harass or to cause unnecessary delay or needless increase in the costs of litigation; and
8 (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the
9 discovery already had in the case, the amount in controversy, and the importance of the issues
10 at stake in the litigation.

11 Dated this 28th day of September, 2021.

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DEFENDANT WALMART INC.'S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND
ANSWERS THERETO- 21

Emerald Law Group PLLC
12055 15th Avenue NE
Seattle, Washington 98125
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EXHIBIT D

FILED

2021 JUN 23 PM 1:05

CHARLEEN GROOMES
OKANOGAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

BRIGITTE WOODBURY, an individual,

Plaintiff,

v.

WALMART, INC.

Defendant.

NO.
21-2 0016024

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Brigitte Woodbury, by and through her attorneys Jonathan Nolley of the Emerald Law Group and Alex Thomason of Valor Law Group, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1.1 The above-entitled court has jurisdiction over the subject matter of this lawsuit.

1.2 The above-entitled court is the proper venue for this action because the incidents described herein and the negligent and tortious acts alleged herein occurred in Omak, Okanogan, Washington.

II. PARTIES

2.1 At all times material hereto, Plaintiff Brigitte Woodbury ("Plaintiff") is and was an individual residing in Okanogan County, Washington.

COMPLAINT FOR DAMAGES- 1

COPY

EMERALD LAW GROUP
12055 15th Avenue NE
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1 2.2 At all times relevant hereto, Defendant Walmart, Inc ("Walmart") is and was a
2 corporation doing business in Okanogan County, Washington.

3 **III. CLAIMS AGAINST DEFENDANT**

4 3.1 Defendant is the owner of a local Walmart store located at 902 Engh Road, Omak,
5 Washington.

6 3.2 On or about February 4, 2021, Plaintiff went shopping at Defendant's store.

7 3.3 When Plaintiff was in the electronics department of the store, an employee of
8 Defendant, also in the electronics department, was pushing a flat "platform-style truck" cart ("the
9 cart") that was low to the ground.

10 3.4 This same employee pushed the cart and left it directly behind where Plaintiff was
11 standing with her back turned to the cart.

12 3.5 Neither the employee nor any other employee of Defendant took any steps to warn
13 Plaintiff of the cart that was directly behind her.

14 3.6 As Plaintiff turned to leave, she tripped over the cart and suffered injuries.

15 3.7 At all times relevant hereto, Plaintiff was a business invitee at Defendant's store.

16 3.8 Defendant owed Plaintiff a duty to maintain a safe premises and to take measures to
17 prevent Plaintiff from encountering any hazards or provide adequate warning to allow Plaintiff to
18 avoid such hazards.

19 3.9 It was foreseeable that Plaintiff would trip and fall over the low-profile cart that was
20 left behind her.

21 3.10 Defendant breached its duties when its employee left the cart directly behind
22 Plaintiff and in a place where Plaintiff could not see the cart prior to turning and tripping over the
23 low platform of the cart.

24 COMPLAINT FOR DAMAGES- 2

25 **EMERALD LAW GROUP**
26 12055 15th Avenue NE
27 Seattle, Washington 98125
28 T: 206.826.5160
 F: 206.922.5598

1
2 3.11 As a direct and proximate result of Defendant's acts and/or omissions described
3 herein, Plaintiff suffered damages.

IV. DAMAGES

5 As a direct and proximate result of the Defendant's negligence and acts alleged herein,
6 Plaintiff was injured, suffered and continue to suffer from, without limitation, severe personal
7 injuries, physical disability and pain, pain and suffering, future pain and suffering, emotional
8 trauma, medical expenses, loss of enjoyment of life, lost income and earnings, and other
9 economic and non-economic damages to be proven at trial.
10

V. LIMITED PHYSICIAN/PATIENT WAIVER

12 Plaintiff hereby waives the physician/patient privilege, but only to the extent required by
13 RCW 5.60.060, and as limited by Plaintiff's Constitutional rights of privacy, contractual rights of
14 privacy, and as circumscribed by the ethical and legal obligations of treating physicians and
15 attorneys for the defendants not to engage in *ex parte* contact.

17 | WHEREFORE, Plaintiff pray for relief as follows:

18 1. Judgment against the Defendant for damages sustained by Plaintiff in an amount to
19 be determined at trial;

20 2. For Plaintiff's costs and disbursements herein;

21 3. For an award of Plaintiff's attorney's fees;

22 4. For an award of pre-judgment interest at the statutory rate on items of special
23 damages including, without limitation, expenses of medical care and treatment and property
24 damage; and

25 5. For such other and further relief as the court may deem just and equitable.

COMPLAINT FOR DAMAGES-3

EMERALD LAW GROUP
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Seattle, Washington 98125
T: 206.826.5160
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2 DATED this 16 day of June, 2021.
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EMERALD LAW GROUP, PLLC

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6 Jonathan Nolley, WSBA No. 35850
7 Attorneys for Plaintiff
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VALOR LAW GROUP PS.

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Alex Thomason, WSBA No. 35975
Attorneys for Plaintiff

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COMPLAINT FOR DAMAGES- 4

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7 SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

8 BRIGITTE WOODBURY,

9 Plaintiff,

10 v.

11 WALMART INC,

12 Defendant.

NO. 21-2-00160-24

NOTICE OF APPEARANCE OF
DEFENDANT WALMART INC.

13 TO: CLERK OF THE COURT; and

14 TO: COUNSEL FOR PLAINTIFF

15 PLEASE TAKE NOTICE that Defendant WALMART INC. without waiving
16 objections as to improper service, venue or jurisdiction, hereby appears in the above entitled
17 cause by and through its attorneys, Williams, Kastner & Gibbs PLLC, and requests that all
18 further papers and pleadings herein, exclusive of original process, be served upon the
19 undersigned attorneys at the address stated below.

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NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 DATED this 27th day of July, 2021.

2 WILLIAMS, KASTNER & GIBBS PLLC

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4 
5

6 Rodney L. Umberger, WSBA No. 24948
7 Eddy Silverman, WSBA No. 53494

8 Two Union Square
9 601 Union Street, Suite 4100
10 Seattle, WA 98101-2380
11 Phone: 206.628.6600
12 Fax: 206.628.6611
13 Email: rumberger@williamskastner.com
14 esilverman@williamskastner.com

15 *Counsel for Defendant Walmart Inc.*

16 NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 2

17 Williams, Kastner & Gibbs PLLC
18 601 Union Street, Suite 4100
19 Seattle, Washington 98101-2380
20 (206) 628-6600

21 7428905.1

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that on the date indicated below, I caused service of a true and correct copy of the
4 foregoing document in the manner indicated below to:

5 EMERALD LAW GROUP, PLLC
6 Jonathan Nolley, WSBA #35850
7 12055 15th Avenue NE
Seattle, WA 98125
Tel" 206.826.5160
8 Email: jonathan@emeraldlawgroup.com

USPS
 E-mail

9 VALOR LAW GROUP PS
10 Alex Thomason, WSBA 35975
11 110 W Lakeshore Dr.
Pateros, WA 98846
Tel: (509) 689-3471
12 Email: alex@valorlawgroup.com
madison@valorlawgroup.com

13 ***Counsel for Plaintiff***

14
15 Signed at Lynnwood, Washington this 27th day of July, 2021.

16 WILLIAMS, KASTNER & GIBBS PLLC

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20 Catherine Berry, Legal Assistant
cberry@williamskastner.com

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NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 3

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7 SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

8 BRIGITTE WOODBURY,

NO. 21-2-00160-24

9 Plaintiff,

JURY DEMAND – 12 JURORS

10 v.

(Clerk's Action Required)

11 WALMART INC,

12 Defendant.

13 Defendant Walmart Inc. hereby demands a trial by a jury of 12, and deposit with the
14 Clerk of the Court the statutory fee of \$250.00.

23 \\\

24 \\\

25 \\\

JURY DEMAND – 12 JURORS 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 DATED this 10th day of August, 2021.

2 WILLIAMS, KASTNER & GIBBS PLLC

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4 
5

6 Rodney L. Umberger, WSBA No. 24948
7 Eddy Silverman, WSBA No. 53494

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14 esilverman@williamskastner.com

15 *Counsel for Defendant Walmart Inc.*

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JURY DEMAND – 12 JURORS 2

Williams, Kastner & Gibbs PLLC
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12 Email: alex@valorlawgroup.com
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13 *Counsel for Plaintiff*

14
15 Signed at Lynnwood, Washington this 10th day of August, 2021.

16 WILLIAMS, KASTNER & GIBBS PLLC

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20 Catherine Berry, Legal Assistant
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JURY DEMAND – 12 JURORS 3

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6
7 SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

8 BRIGITTE WOODBURY,

NO. 21-2-00160-24

9 Plaintiff,

DEFENDANT WALMART INC.'S
10 v. ANSWER TO COMPLAINT FOR
11 WALMART INC, DAMAGES

12 Defendant.

13
14 WALMART INC. ("Walmart"), by and through its attorneys of record, hereby answers
15 Plaintiff BRIGITTE WOODBURY'S ("Plaintiff") Complaint as follows:

16 1. Paragraphs 1.1 and 1.2 of the Complaint call for a legal conclusion and/or make
17 assertions to which no response is required under CR 8. To the extent a response is required,
18 Walmart admits that the disputed events described in the Complaint ("events in question")
19 occurred in Omak, Okanogan County, Washington, while deferring to the Court and to
20 Washington law with respect to questions of jurisdiction and proper venue. Walmart denies
21 negligence and denies having engaged in "negligent and tortious acts" as described in the
22 Complaint.

23 2. Walmart is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations contained in paragraph 2.1 of the Complaint.

25 3. In response to the allegations contained in paragraph 2.2 of the Complaint,

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 1

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1 Walmart admits that Walmart Inc. is a corporation, and further admits that Walmart Inc.
2 transacts business in Okanogan County, Washington, among other places.

3 4. In response to the allegations contained in paragraph 3.1 of the Complaint,
4 Walmart admits that Walmart Inc. is the owner of a Walmart Supercenter located at 902 Engh
5 Road, Omak, Washington (“Omak Walmart”).
6

7 5. In response to the allegations contained in paragraph 3.2 of the Complaint,
8 Walmart admits that Plaintiff was on the premises of the Omak Walmart at the time of the
9 events in question.

10 6. In response to the allegations contained in paragraph 3.3 of the Complaint,
11 Walmart admits that the events in question occurred in or around an area of the Omak Walmart
12 where electronics are sold. Walmart further admits that a Walmart associate had been utilizing
13 an “L-Cart” in or around this same area at or around the time of the aforementioned events.
14

15 7. Walmart denies the allegations contained in paragraph 3.4 of the Complaint.

16 8. Walmart is without knowledge or information sufficient to form a belief as to
17 the truth of the allegations contained in paragraph 3.5 of the Complaint, and therefore denies
18 the same.

19 9. In response to the allegations contained in paragraph 3.6 of the Complaint,
20 Walmart admits that Plaintiff purportedly tripped over or near an L-Cart on the date of the
21 events in question. Walmart is without knowledge or information sufficient to know whether
22 Plaintiff was turning to leave at this time or whether Plaintiff was injured as a consequence of
23 this trip.
24

25 10. Paragraph 3.7 of the Complaint calls for a legal conclusion and/or makes

DEFENDANT WALMART INC.’S ANSWER TO COMPLAINT FOR
DAMAGES 2

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assertions to which no response is required under CR 8. To the extent a response is required, Walmart is without knowledge or information sufficient to know whether Plaintiff was a business invitee “at all times relevant hereto” and therefore denies the allegations contained in this paragraph.

11. Paragraph 3.8 of the Complaint calls for a legal conclusion and/or makes assertions to which no response is required under CR 8. To the extent a response is required, Walmart admits that Walmart Inc. is bound by the duties of premises owners owed to customer-invitees defined by and under Washington law with respect to operations in Walmart-owned retail establishments within the State of Washington.

12. Walmart denies the allegations contained in paragraphs 3.9, 3.10, and 3.11 of the Complaint.

AFFIRMATIVE DEFENSES

Walmart has not had an opportunity to conduct a full inquiry of the facts underlying this lawsuit, but based upon its knowledge, information, and belief formed after discovery in similar lawsuits wishes to interpose the following affirmative defenses to preserve its right to present said defenses at the time of trial in this matter. Upon request and after having conducted discovery in this case, Walmart will voluntarily withdraw those affirmative defenses that are unsupported by the facts revealed in pre-trial discovery and investigation.

1. Plaintiff's damages, if any, were proximately caused by the negligence of Plaintiff in failing to exercise reasonable care.

2. Plaintiff's claimed injuries and damages were due to actions of third parties beyond the control of Walmart.

3. The risk of injury or damage to Plaintiff was not foreseeable to Walmart.

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 3

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1 4. Plaintiff's claims are barred by some or all of the following: waiver, estoppel,
2 laches, ratification, acquiescence, accord and satisfaction, and/or consent.

3 5. Walmart took precautions and affirmative actions that were consistent with the
4 state of its knowledge at the time.

5 6. To the extent any defective or dangerous condition existed, said condition was
6 open and obvious.

7 7. The condition alleged was not dangerous, as a matter of law.

8 8. Walmart had no notice of the allegedly dangerous condition.

9 9. Walmart exercised reasonable care to protect Plaintiff and/or did not breach any
10 duty to Plaintiff.

11 10. Plaintiff's alleged damages are the result of pre-existing injuries or conditions.

12 11. Plaintiff had adequate warning of the allegedly dangerous condition.

13 12. Plaintiff assumed the risk of injury.

14 Pursuant to RCW 4.22.070 and CR 12(i), the percentage of fault that allegedly caused
15 Plaintiffs' injuries, if any, should be apportioned among the following parties or entities:

16 A. Plaintiffs, for engaging in any conduct which may have increased the
17 risk of being injured during and/or preceding the incident, and any other factors that future
18 discovery may disclose regarding the degree of fault attributable to Plaintiffs;

19 B. Other entities that contributed to Plaintiffs' alleged injuries having
20 specific factual or procedural defenses that bar Plaintiffs' cause of action against those entities;
21 and

22 C. Any non-party Defendant(s) that may have caused or contributed to
23 Plaintiffs' claimed injuries and damages.

24 Walmart reserves the right to seek leave to amend this Answer (a) for the specific
25 purpose of naming other parties believed to have caused or contributed to Plaintiffs' claimed

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 4

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injuries and damages, as well as (b) generally, as future discovery may warrant.

Walmart denies each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise pled to herein.

Walmart hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Washington State Court Rules as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Walmart reserves the right to seek leave of Court to amend its Answer to specifically assert any such defense(s). Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

Pursuant to Rule 11 of the Washington State Court Rules, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiff's Complaint, and therefore Walmart reserves the right to amend its Answer to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint and having asserted affirmative defenses, Walmart prays for judgment as follows:

1. For dismissal of Plaintiff's Complaint with prejudice;
2. For all costs, disbursements, and reasonable and statutory attorney fees incurred in the defense of this action, in an amount to be determined at the time of trial; and
3. For such other and further relief as the Court deems just and equitable.

DATED this 3rd day of September, 2021.

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 5

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10 ***Counsel for Defendant Walmart Inc.***

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DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 6

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1 **CERTIFICATE OF SERVICE**

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3 Washington that on the date indicated below, I caused service of a true and correct copy of the
4 foregoing document in the manner indicated below to:

5 EMERALD LAW GROUP, PLLC E-mail, per E-Service Agreement

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13 *Counsel for Plaintiff*

14
15 Signed at Lynnwood, Washington this 3rd day of September, 2021.

16 WILLIAMS, KASTNER & GIBBS PLLC

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20 Catherine Berry, Legal Assistant
cberry@williamskastner.com

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DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR
DAMAGES 7

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